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Supreme Court, U.S.
FILED

No. 001451

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IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 2000

ALBERT L. PEIA,
Petitioner

v.

THE UNITED STATES OF AMERICA, OFFICE OF THE UNITED STATES TRUSTEE AND RICHARD M. COAN, INDIVIDUALLY, AND IN HIS REPRESENTATIVE CAPACITY FOR THE UNITED STATES TRUSTEE, AND JOHN DOES 1-15,
Respondents

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED FOR REVIEW

1. Did the trial court judge Matz' fraudulent misrepresentation of the record relating to jurisdiction pursuant to 18 U.S.C. Section 1965(b) and application thereof constitute prejudicial error?

2. Did vicarious liability extend to government defendant USA for predicate RICO violations of high ranking federal employees?

3. Did federal employee Shiff's independent acts of mail fraud including fraudulent hearing dates as well as an order predicated upon RICO violation, and consequent bankruptcy fraud thereby, equitably toll any purported Statute of Limitations?

4. Do the criminal acts of federal judicial employees in furtherance of and to coverup the RICO conspiracy in this case call for the exercise of the Supreme Court's supervisory power?

5. Did the RICO pattern of racketeering, and bankruptcy fraud subsumed therein, for which petitioner instituted suit, and which illegal acts violative of RICO continued even after suit, constitute an open-ended pattern of racket-eering and regular way of doing business and threat of continuing RICO violations thereby?

6. Did the criminally illegal and commercial acts of defendant USA, of the nature of those as would be

committed by a private person or actor, in violation of RICO and "non-governmental" thereby as involved herein render inaposite the doctrine of sovereign immunity as asserted by defendant USA in this case?

7. Did the lower court commit prejudicial error in failing to apply equitable tolling in conjunction with the numerable coverups violative of RICO, and as well as fraudulentlyconcealing predicate acts thereunder?

8. Does aiding & abetting and deriving benefits from predicate acts violative of RICO, impute liabilty to a RICO "person"/enterprise as defendant USA, with knowledge and participation of high ranking

government officials thereof as herein?

9. When do causes of action under RICO accrue when the commission of predicate acts by federal employees to fraudulently conceal and/or thwart same, corrupt the "process" obstructing justice thereby, even as plaintiff diligently pursues such claims through said corrupted process?

10. Does as a matter of law, the dilatory, illegal, and bad faith tactics of defendants, require in the interests of fairness and justice the entry of default/default judgment which was appropriate in light of defendant USA's default?

11. Did the lower court err in failing to consider and apply the

clear and plain language of Title 28 U.S.C. Section 586 consistent with Congressional intent concerning federal supervision of panel trustees pursuant to the duty created thereunder?

12. Did the lower courts err in failing to apply the proper standard of review to the 12(b)(6) Motion to Dismiss by defendant USA requiring, for purposes of said motion that the averments (also under penalty of perjury by plaintiff) be accepted as true in opposition and exhibits filed therein?

13. Do the aforesaid aforesaid important questions of federal law subject to divergent, inconsistent, and otherwise conflicting opinions

among the circuits, and of substantial public importance, call for the Supreme Court's resolution of same herein?

II. PARTIES (same as caption; Albert L. Peia, plaintiff/petitioner, pro se; defendant United States of America, respondent; defendant Richard M. Coan, respondent).

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V. JURISDICTION

The judgment of the Court below (Appendix A, infra at pages 1-5, was entered on December 15, 2000. Rehearing was not sought. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

VI. STATUTES/CONSTITUTIONAL PROVISIONS

A. Racketeer Influenced and Corrupt Organizations Act, Title 18 U.S.C. Sections 1961 et seq., the pertinent provisions of which are set forth in Appendix B, infra, at pages 1-25.

B. Duties; Supervision by Attorney General, Title 28 U.S.C. Section 586, the pertinent provisions of which are set forth in Appendix B, infra, at page 26.

C. The federal statute concerning aiding and abetting, though nothing turns on its terms, 18 U.S.C. Section 2, provides as follows:

' (a) Whoever commits an offense against the United States or aids,

abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be a crime against the United States, is punishable as a principal. '

D. The federal statute concerning Misprision of Felony, though nothing turns on its terms, 18 U.S.C. Section 4, provides as follows:

' Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under

the United States, shall be fined under this title or imprisoned not more than three years, or both. '

E. Liability of United States, Title 28 U.S.C. Section 2674, the pertinent provisions of which are set forth in Appendix B, infra, at pages .

F. Exceptions, Title 28 U.S.C. Section 2680, the pertinent provisions of which are set forth in Appendix B, infra, at pages .

G. Bribery of public officials and witnesses, Title 18 U.S.C. Section 201, the pertinent provisions of which are set forth in Appendix B, infra, at pages .

H. The federal statute concerning Bankruptcy Fraud, Title 18 U.S.C. Section 157, provides as follows:

'A person who, having devised or intending to devise a scheme or artifice to defraud and for the purposeof executing or concealing such a scheme or artifice or attempting to do so-

(1)files a petition under title 11;

(2) files a document in a proceeding under title 11; or

(3) makes a false or fraudulent representation or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title, shall be fined under this title, imprisoned not more than 5 years, or both.'

VII. STATEMENT OF THE CASE

The instant case is a rather classic example of the application of and importance of the RICO statute from the perspective of the remedial goals thereof as well as to thwart corruption and organized crime. Specifically, petitioner, a sole practitioner in the law, was ultimately confronted with the nefarious infiltration of organized crime into not only the several businesses of a substantial client (who had been referred to me from an insurance agent with whom I had previously dealt as a marketing/sales representative for an insurance company), but as well, various "institutions" of

defendant USA. It is the integral involvement of defendant USA in the racketeering activity involved herein as well as providing the means by which to cover-up, facilitate, aid and abet violations of the RICO Act in addition to various other statutes and common law,that is the gravamen of the instant case. It should also be emphasized that defendant Coan, the Chapter 7 trustee assigned to administer petitioner's bankruptcy estate upon its conversion from a case under Chapter 13, engaged in racketeering activity violative of the RICO Act as well as other statutory and common law, flagrantly breaching his fiduciary duty as trustee.

Substantial monies were owed to petitioner by the mob-infiltrated and ultimately mob-controlled New Jersey companies of Carlo Dilena. Substantial New York mob ties existed, also including the Trumps through whose casinos substantial sums of money were being laundered. Improprieties and illegal acts violative of RICO, ERISA, and other law led plaintiff to initiate a RICO action in August,1987,against said companies and person who had conditioned payment upon petitioner's acquiescence to(and hence complicity in) said illegal acts, which petitioner rejected. Said case was promptly assigned to newly appointed federal judge Maryanne Trump (Barry)(U.S. District Court, Newark, N.J.). Petitioner

scheduled an appointment and met personally with Assistant U.S. Attorney Jonathon Lacey at the Office of the U.S. Attorney on Broad St., Newark, N.J.. Petitioner discussed the criminal activities of Dilena and companies also providing him with documentation concerning same.

Financially constrained by the aforesaid and concomittant "pressure" applied by said mob groups, petitioner filed a Chapter 11 bankruptcy in May, 1988. Petitioner moved to recuse Maryanne Trump (Barry) citing the substantial sums of (drug) money said defendants "provided" to the Trump casinos and the obvious conflict thereby. Petitioner met with federal employee and U.S. Trustee Hugh Leonard

and related the foregoing and asked that he join in my motion to recuse Trump, which he refused to do. Indeed, not long thereafter, U.S. Trustee Leonard left his position for private practice, on (bribe) retainer with the aforesaid RICO defendants Dilena and companies. Additionally, not long after meeting with Assistant U.S. Attorney Lacey, Lacey "cut a private practice (bribe) deal", taking the "file" and documents I had tendered "with him". I subsequently redelivered by hand, copies of the aforesaid documents in a package addressed to Sam Allito, which package was received by a federal employee in said office who indicated same would be delivered to federal employee and U.S. Attorney Sam Allito.

Not long thereafter, Sam Allito received an (defendant USA government/bribe/deal) appointment to the 3rd Circuit Court of Appeals (where he currently sits)and upon subsequent inquiry of said office, no record of the aforesaid documents and/or file was found. Trump(Barry) refused to recuse herself and proceeded to (actionably, in violation of RICO) corrupt the "process" favorably to said RICO defendants who continued to launder (drug,etc.) money through her brothers' casinos.

With the exception of my mother (who helped with expenses by way of her V.A. pension from my deceased father in this tumultuous time of substantial "pressure", financially

and otherwise - the pressure became too much for my mother and she granted me a general power of attorney over her affairs), there was no one that the "mob" was not able to "get to" (betray/damage me); ie., my ex-wife and her family, a "friend" I had known since Sunday school/cub scouts/high school (calling and asking me "wasn't I dead yet?"), etc., during this tumultuous time when I was pressing the RICO litigation. Ultimately, I awoke one morning in early 1990 to find my mother "removed", leaving virtually all her personal effects and her car (I had my own car), after which I moved to Connecticut, and was there informed by detectives that she had passed away, not long thereafter,

alone in a room she was renting in N.J. from some Italian, all the facts surrounding which I still have not been able to discern.

The action before Maryanne Trump was dismissed without prejudice in or around December, 1989. In the meantime, to preserve (541 A) assets of the estate and create a "paper trail" I filed a Chapter 13 proceeding in Connecticut, which proceeding was corrupted by federal employee Shiff, and then a Chapter 7 proceeding in Virginia where I had maintained an office and residence in September, 1989, seeking a liquidation of three real properties with substantial equity among other assets (the RICO action was also listed therein) and

payout to creditors, which would have left me with a significant sum owing to the minimal amount of debt relative thereto. Said Virginia Chapter 7 proceeding was never consumated in accordance with law.

In Connecticut, I forwarded to the office of the U.S. Attorney documentation concerning the foregoing, having spoken with then Assistant U.S. Attorney Hughes. I also was given the fax number from the Office of FBI Director Louis Freeh, to whose attention I faxed and sent by courier documentation relating to the foregoing as well as matters as they arose. I had previously sent documents concerning the foregoing to first then Attorney General William Barr, and subsequently

Attorney General Janet Reno. I also spoke with and sent documents concerning the foregoing and matters as they arose (ie., relating to Shiff) to FBI agent Ron Barndollar to whom I had been referred. Parenthetically, FEDEX was in contempt of a subpoena in the California proceeding as regards the transmissions to Attorneys General Barr and Reno (also concerning a notice of tort claim which apparently had not been properly logged in). Moreover, unbeknownst to me at the time of said transmissions, was the fact that former Attorney General Barr, who had formerly "represented" the CIA, was himself actively involved in defendant USA's substantial illegal

drug (ie., cocaine) "business" (ops) by way of the CIA. (Clinton's own involvement in same including the laundering of the proceeds thereof, ie., Dan Lassiter, Roger Clinton, Tyson Foods, etc., is well documented, but quite obviously, covered up, as has been so of former Attorney General Reno's derelictions, and as well that which is involved in this case.

For purpose of preserving the statute of limitations on the relevant claims, I instituted a RICO action in the U.S. District Court for the District of Connecticut on April 14, 1992, Docket No. 92 cv 00166, which case was assigned to Judge Daley. The case was ultimately stayed by Judge Daley owing to bankruptcy

proceedings of petitioner and parallel (ie., primary RICO defendants, etc.) adversary proceedings. Various RICO violations occurred during this time period, perpetrated by federal employee Alan Shiff, among others, and toward the end of fraudulently concealing and covering up various illegal activities violative of RICO among other statutes and laws, inter alia, obstructing justice and committing bankruptcy fraud thereby. Notably, (fraudulent) false hearing dates, fraud in bringing a (retaliatory as to petitioner as a witness/informant) spurious contempt proceeding (in the absence of any jurisdiction for him to legitimately do so) against petitioner based upon

Shiff's knowingly false statements, among other wrongful acts for the purpose of covering up the subject illegal acts, as well as to damage and defraud petitioner, his bankruptcy estate, and creditors thereby.

Upon the passing of Judge Daley, the case was transferred to Judge Thompson, who subsequently recused himself from same owing to a conflict, and then to Judge Arterton. Said case was dismissed without prejudice by Judge Arterton who indicated in said order of dimissal without prejudice her presumption that the case was being resolved in the bankruptcy (ie., parallel adversary proceedings, etc.). Indeed, having been served, some of the primary defendants were in default, some

without legitimate defense, some indicating a desire to settle (paying a small sum up front), and two minor (separate from the parallel "RICO" proceedings) defendants settling outright. The requests to enter defaults were made on 4-5-96. In the meantime, anticipating the corrupt and illegal modus operandi (there had been a prior felonious removal of a filed bankruptcy court motion by me, a copy of which had also been concurrently served upon Shiff) of federal employee Shiff, which included removing a motion which was received (by the court) but not scheduled (by Shiff) regarding utilities which were wrongfully cut off and collusively refused reconnection

to a tennant with impeccable credit in the freezing cold of late January, 1996, upon "notice" by way of courier to FBI Director Louis Freeh, former Attorney General Janet Reno, and the (former) Chief Judge of the Hartford division of the bankruptcy court for the district of Connecticut Robert Kreshevsky, referencing Shiff's corruption, I filed a Chapter 13 petition in California (Los Angeles), also referencing the Connecticut case (having made arrangements for travel to and location there). Said California Chapter 13 case was converted to a case under Chapter 7 on or about 4-11-96. To maintain "control" over the case as well as to cover up his own as well as other illegal acts, Shiff converted the

Connecticut case to Chapter 7 on 5-1-96. It should be noted that the filed Chapter 13 plan in the Connecticut proceeding provided for 100% payment to creditors with interest, and more than sufficient assets to accomplish same if not for fraud and corruption in the process. Indeed, for example, a judgment had been entered in petitioner's favor in the U.S. District Court for the District of Connecticut. Defendant Coan has neither executed on nor abandoned same. In a matter involving adversary proceeding defendant David George Swann, (junkie among other illegal drug use, in less than 5 years of residence in California had 3 guilty

pleas to theft), which was ripe for the entry of default (and judgment - I flew in from California for the hearing before Shiff), despite being joined therein as plaintiff/trustee, Coan purposefully refused to allow same to go forward despite proofs of service and damage to the bankruptcy estate, defrauding petitioner and creditors thereby in breaching his fiduciary duty. He has neither reinitiated nor abandoned said action. Additionally, Shiff did commit, inter alia, mail fraud by sending an order predicated upon his own knowing and purposeful fraud to the bankruptcy court in Los Angeles, Ca., which in reliance upon Shiff's fraudulent representations therein, and in deference

thereto did dismiss the California Chapter 7 proceeding, despite the fact that the 341A hearing in said (California) case had already been consumated.

Defendant Coan was appointed Chapter 7 Trustee and along with Shiff, predictably, has committed substantial illegal and wrongful acts violative of RICO and other law as set forth in this case. Plaintiff's injuries by reason of the aforesaid predicate acts violative of RICO, ie., mail fraud, bankruptcy fraud, etc., accrued on 12-5-96 when Shiff entered an order dismissing the ("parallel to RICO") adversary proceedings with prejudice, owing to Coan's failure to file anything (paper/response/

opposition, etc.) as "ordered" concerning said adversary proceedings. Said order was appended as an exhibit to the Verified and First Amended Verified Complaints herein. Defendant Coan (in anticipation of litigation concerning the foregoing - I had stated to him that he would be "receiving papers" from me) brought suit against petitioner in the U.S. District Court for the District of Connecticut seeking to enjoin me from suing (him or any other party) without leave of Court.

The matter was heard before the Honorable Robert Chatigny, U.S.D.C.J., on or around 7-31-97, for which hearing I flew in from California. On cross-examination, Coan admitted that he was not aware of any legal

way a Chapter 7 proceeding as in Virginia could have been "resolved" without marshalling of assets, etc., nor how a real property and significant asset of the Connecticut Chapter 13 (and then 7) estate, having substantial equity, could have been legally sold during the pendency and applicability of the automatic stay in accordance Section 362 of Title 11, U.S.C.. Nor was he able to explain same (which was object of one of the adversary proceedings which was ripe for the entry of default/judgment for which there was no legitimate defense) to Judge Chatigny who further questioned Coan concerning same. The Honorable Robert N. Chatigny did deny Coan's request

to enjoin petitioner from bringing suit without leave of Court. The instant action from which this appeal arises did follow.

The jurisdiction of the court below was predicated upon RICO, and federal question thereby.As set forth infra, the Court of Appeals, in its aborted and purported "decision" did continue the miscarriage of justice, coverup, extent in this case and for which prejudicial error, being contrary to the ends of justice, reversal is appropriate as a matter of law.

The foregoing has been set forth in the record below, the averments of which were under penalty of perjury and which are reattested to herein.

Dated: 3-15-91 Signed: _____
Albert L. Peia

VIII. ARGUMENT

A. Reasons for Granting the Writ

* Title 18 U.S.C. Section 1965(b) was misconstrued and misapplied in a predictably criminally result-oriented fashion by the lower court, with prospective consequences antithetical to the intent of the RICO Act.

* Despite this Court's eminent decision in Rotella, a uniform, nationally applicable guideline as to when a RICO cause of action accrues remains elusive and can be resolved by addressing the issue presented herein.

* The Court can provide substantial guidance (deterrence) in reinforcing the (well settled) rule of law that criminal acts of federal employees, judicial or otherwise, are not within the scope of sovereign immunity.

* The Court can bring coherence to the body of RICO law relating to the vicarious liabilty of culpable "persons" and/or enterprises.

* The Court can eliminate the divergence of circuit court opinion regarding the (RICO) liability of public entities for non-governmental criminal activities, and respondeate superior liability for the criminal acts of high ranking employees thereof, the application of Section 1965(b), aiding and abetting liability under RICO,the plain "meaning" accorded statutes,and standards for F.R.Civ.P.12(b)6motions.

B. The 9th Circuit Court of Appeals has incorrectly decided important questions of federal law relating to the RICO Act, thwarting Congressional intent thereby. Moreover,

the 9th Circuit is in conflict with other circuits on similar issues. Indeed, the 9th Circuit, along with the court below, has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court's supervisory power. The split of authority among the circuits with regard to construing Section 1965(b) is no justification for the courts below to have,predicated upon fraudulent misrepresentation of the record concerning the multi-district conspiracy involved in this case as set forth in the pleadings, ignored their own purported rule; particularly regarding defendantCoan

in a purportedly "federal" role as trustee. I moved to disqualify(denied) the newly appointed"Clinton ringer", J.Matz,who not coincidentally replaced retiring Judge Davies in this case, with predictably corrupt consequences. The case of Rotella v. Wood,120 S.Ct. 1075(2000)is telling as regards the application of equitable tolling, if not a settled rule of accrual,to this case,where U.S.D.C.Judge Arterton dismissed the Connecticut RICO action without prejudice stating in her order her presumption that the case was being resolved in the bankruptcy (and "parallel" adversary) proceedings (which would have been the case if not for the illegal and corrupt acts of defendants). Petitioner suffered no injury from the illegal acts of

defendants until the dismissal with prejudice by Shiff on 12-5-96, in light of the pendency of the RICO action in the District of Connecticut. Petitioner did sustain injury on 12-5-96; that is,the injury and hence the cause of action accrued on 12-5-96 when Shiff dismissed with prejudice the "parallel" adversary proceedings consistent with a pattern of racketeering activity including the predicate acts of bankruptcy fraud,obstruction of justice,among other laws,state and federal. Notices of claim and action(s) were timely filed thereafter.[1/]

The corrupt and illegal acts docu-

1/ (The recent case of Semtek Int'l Inc. v. Lockheed Martin Corporation, (decided 2-27-01), 531 U.S.___(2001), is instructive regarding dismissals on other than the merits, ie., purported statute of limitations grounds).

mented here requires the exercise of the Court's supervisory power pursuant to S.Ct.R. 10(a). Moreover, sovereign immunity is not appropriate in accordance with the rationale of Southway v. Central Bank of Nigeria, 198 F.3rd 1210(10thCir.1999), analogously apposite here, inasmuch as defendant U.S.A.'s illegal acts are similarly 'non-governmental'. It would be antithetical to the goals of RICO to preclude vicarious liability of defendant U.S.A. for aiding and abetting,with knowledge and participation of high ranking federal employees in ongoing criminal activity as a regular way of conducting business.The plain language of Title 28 U.S.C. Section 586 clearly imposes a federal duty

to supervise a trustee such as Coan. The standard of review for a Fed.R. 12(b)(6) Motion to Dismiss was not properly applied herein. The split among circuits concerning important issues of federal law, viz., accrual of a RICO cause of action, vicarious liability as well as aiding and abetting RICO predicate acts (where benefits are derived therefrom, particularly where the acts are illegal,part of a pattern, and non-governmental, along with the corrollary issue of respondeate superior liability),gives rise to the Court's need to address same pursuant to S.Ct.R.10(a),(c).

IX. CONCLUSION

It is important to emphasize the role played by "private attorneys general" in effectuating Congressional

vis-a-vis the RICO Act where the process has failed or, as in the instant case, been corrupted. The record indicates the infiltration of the subject enterprises by organized criminal elements, and as well the entities within the (federal) process that are entrusted to apply and enforce the law. Federal prosecutors have in violation of federal law covered up illegal acts within the ambit of RICO. Absent judicial intervention herein, the law, RICO particularly, and the notion of "private attorneys general" to effectuate the remedial goals thereof are rendered at best, illusion and wishful thinking,and at worst, delusion and deception. Lest we await the infiltration of and defacto

"takeover" thereby of even the most hallowed and respected institutions of this nation, the grant of certiorari in this case is a national imperative.

In sum, the decision below demonstrates so compelling a need for the exercise of this Court's power of supervision that it should be summarily reversed, under Supreme Court Rule 16, on the issues presented by this petition. Each day that the aforesaid decision below is allowed to stand, its (criminally) result-oriented "rationale" along with mistatements of law and fact, will work predictable mischief by unsettling longstanding principles established by the Court, and further muddy conflicting law among the circuits.

Respectfully Submitted: _____